

Commonwealth of Massachusetts

Board of Conciliation and Arbitration

Rules and Regulations

457 CMR: BOARD OF CONCILIATION AND ARBITRATION

Table of Contents

(457 CMR 1.00:	RESERVED)	3
457 CMR 2.00:	RULES FOR INTEREST MEDIATION, FACT-FINDING AND INTEREST ARBITRATION IN DISPUTES INVOLVING PUBLIC EMPLOYERS AND PUBLIC EMPLOYEES; PRIVATE SECTOR INTEREST MEDIATION	5
Section 2.01:	Scope of Rules	5
Section 2.02:	Confidentiality	5
Section 2.03:	Initiation of Interest Mediation and Fact-Finding	5
Section 2.04:	Voluntary Interest Mediation	6
Section 2.05:	Appointment of a Mediator	6
Section 2.06:	Mediator's Function	6
Section 2.07:	Public Access	7
Section 2.08:	Mediator's Report	7
Section 2.09:	Designation of a Fact-Finder	7
Section 2.10:	Withdrawal of Fact-Finding Petition	8
Section 2.11:	Fact-Finder's Responsibilities	8
Section 2.12:	Mediation during Fact-Finding	8
Section 2.13:	Hearing before the Fact-Finder; Subpoenas	8
Section 2.14:	Fact-Finding Report	9
Section 2.15:	Termination of Fact-Finding	10
Section 2.16:	Mediation after Fact-Finding	10
Section 2.17:	Compensation of the Fact-Finder	10
Section 2.18:	Certification of Completion of the Collective Bargaining Process	10
Section 2.19:	Voluntary Interest Arbitration	10
Section 2.20:	Private Sector Interest Mediation	10
Section 2.21:	Severability	10
457 CMR 3.00:	RULES FOR GRIEVANCE MEDIATION AND ARBITRATION IN THE PUBLIC AND PRIVATE SECTORS	11
Section 3.01:	Scope of Rules	11
Section 3.02:	Confidentiality	11
Section 3.03:	Voluntary Grievance Mediation	11
Section 3.04:	Appointment of Mediator	11
Section 3.05:	Mediator's Function	12
Section 3.06:	Admissibility of Grievance Mediation in Arbitration	12
Section 3.07:	Initiation of Grievance Arbitration	12
Section 3.08:	Appointment and Qualifications of the Arbitrator	12
Section 3.09:	Scheduling of Hearing by the Board	13
Section 3.10:	Issuance of Subpoenas	13
Section 3.11:	Hearing before the Arbitrator	13
Section 3.12:	Arbitration Awards	14
Section 3.13:	Clarification, Modification, or Correction of Awards	14
Section 3.14:	Publication of Award and Opinion	15
Section 3.15:	Request for Arbitration Before an Ad Hoc Arbitrator	15
Section 3.16:	Severability	15

457 CMR: BOARD OF CONCILATION AND ARBITRATION

Table of Contents (continued)

457 CMR 4.00:	CONDUCT OF GRIEVANCE ARBITRATION PROCEEDINGS	16
Section 4.01:	Scope of Rules and Effective Date	16
Section 4.02:	Petition to Initiate Grievance Arbitration Before the Board	16
Section 4.03:	Scheduling of Hearing by the Board; Continuances	17
Section 4.04:	Withdrawal of Petition	17
Section 4.05:	Hearing Before the Board	17
Section 4.06:	Arbitration Awards by the Board	18
Section 4.07:	Request for Arbitration Before Ad Hoc Arbitrator	19
Section 4.08:	Gender; Days	19
Section 4.09:	Severability	19
(Section 4.10 through 4.89: Reserved)		19
Section 4.90	Appendix	19

457 CMR: BOARD OF CONCILIATION AND ARBITRATION

(457 CMR 1:00: RESERVED)

The following text is effective 09/01/93

NON-TEXT PAGE

457 CMR: BOARD OF CONCILIATION AND ARBITRATION

457 CMR 2.00: RULES FOR INTEREST MEDIATION, FACT-FINDING AND INTEREST ARBITRATION IN DISPUTES INVOLVING PUBLIC EMPLOYERS AND PUBLIC EMPLOYEES; PRIVATE SECTOR INTEREST MEDIATION

Section

- 2.01: Scope of Rules
- 2.02: Confidentiality
- 2.03: Initiation of Interest Mediation and Fact-Finding
- 2.04: Voluntary Interest Mediation
- 2.05: Appointment of a Mediator
- 2.06: Mediator's Function
- 2.07: Public Access
- 2.08: Mediator's Report
- 2.09: Designation of a Fact-Finder
- 2.10: Withdrawal of Fact-Finder
- 2.11: Fact-Finder's Responsibility
- 2.12: Mediation during Fact-Finding
- 2.13: Hearing before the Fact-Finder; Subpoenas
- 2.14: Fact-Finding Report
- 2.15: Termination of Fact-Finding
- 2.16: Mediation after Fact-Finding
- 2.17: Compensation of the Fact-Finder
- 2.18: Certification of Completion of the Collective Bargaining Process
- 2.19: Voluntary Interest Arbitration
- 2.20: Private Sector Interest Mediation
- 2.21: Severability

2.01: Scope of Rules

M.G.L. c. 30A and M.G.L. c. 150E, § 9, provide that the Board of Conciliation and Arbitration (hereinafter the Board) can adopt such rules as may be required to regulate the conduct of mediation and fact-finding proceedings in public employment, including state, county, municipal, and district government.

2.02: Confidentiality

Public policy and the success of the Board's mission require that the Board and its employees maintain a reputation for impartiality and integrity. Pursuant to M.G.L. c. 150, § 10A, and M.G.L. c. 150E, § 9, any person acting as a mediator, including a fact-finder or interest arbitrator, will not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

2.03: Initiation of Interest Mediation and Fact-Finding

(1) **Petition for Mediation and Fact-Finding.** If a public employer and an employee organization have negotiated for a reasonable period of time and an impasse exists over one or more issues arising out of the negotiations, the public employer, the employee organization, or the parties jointly, may file a Petition for Mediation and Fact-Finding with the Board (MBCA FORM F-1). If the petition is being brought unilaterally, then the petitioning party shall cause a copy of the petition to be served on the principal representative of the other party in accordance with the provisions of this subparagraph. The party or parties requesting mediation and fact-finding shall mail the original petition and one copy, signed by the petitioning party or parties, to:

Board of Conciliation and Arbitration
Leverett Saltonstall Building
100 Cambridge Street, Room 1105
Boston, MA 02202
FAX # (617) 727-4961

2.03: continued

The following text is effective 09/01/93

Upon receipt, the Board will stamp the petition with the date of receipt.

If the petition is filed by FAX, the petitioner shall also immediately mail the original, signed petition and a copy of the pertinent collective bargaining agreement to the Board in the manner set forth above.

(2) Unilateral Petitions. A petitioning party proceeding unilaterally must serve the petition on the principal representative of the other party by first-class mail, postage prepaid. The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with these Rules. Failure to so state will suspend the processing of the petition.

2.04: Voluntary Interest Mediation

At any time during bargaining, whether or not a Petition for Mediation and Fact-finding has been filed, an employee organization or a public employer may request mediation assistance in resolving a collective bargaining dispute. The Board will provide mediators for this purpose.

2.05: Appointment of a Mediator

(1) Investigation. Upon receipt of the petition, the Board shall commence an investigation to determine if the parties have negotiated for a reasonable period of time and if an impasse exists. The Board will notify the parties of the results of its investigation within 10 days of the filing of the petition if it finds that the parties are not at impasse. Failure to notify the parties within ten days shall be taken to mean that an impasse exists.

(2) Appointment. Within five days of the determination of an impasse, the Board will promptly appoint a mediator to assist the parties in the resolution of the impasse.

(3) Selection. The mediator may be appointed from the staff of the Board unless the parties have stated in the Petition for Mediation and Fact-Finding that they jointly request that the Board appoint an outside mediator. If the parties request an outside mediator they shall specify on the Petition for Mediation and Fact-Finding the name, address, and telephone number of the person so selected. If the parties jointly request the appointment of a particular staff mediator, due consideration will be given to such request.

(4) Disqualification or Withdrawal of the Mediator. Prior to accepting an appointment, the mediator is required to disclose to the Board any circumstances likely to create a presumption of bias, or which the mediator believes might disqualify him or her as an impartial mediator.

(5) Fees. There will be no cost to the parties for a staff mediator. The cost of an outside mediator, selected by the parties, will be equally divided between the parties unless they agree otherwise.

2.06: Mediator's Function

The function of a mediator is to assist employers and employee organizations in reaching a voluntary agreement. A mediator may hold separate or joint meetings for this purpose. The mediator shall consult with each party concerning the time, date, and place of each mediation session. However, the mediator retains ultimate control over the scheduling of mediation sessions.

Pursuant to M.G.L. c. 150E, § 9, the mediator is empowered to order the parties to provide specific representatives authorized to enter into a collective bargaining agreement to be present at meetings held for the purpose of resolving the impasse and negotiating such an agreement.

2.07: Public Access

There shall be no public access to mediation sessions.

The following text is effective 09/01/93

2.08: Mediator's Report

After a reasonable period of mediation, the staff or outside mediator shall report in writing to the Board the results of his or her efforts to resolve the impasse. This confidential report will contain the following information:

- (1) The names of the parties;
- (2) A statement of the dates of the first contacts with both the employer and the employee organization;
- (3) A brief description of the unresolved issues which existed at the beginning of the mediation effort;
- (4) A statement of the issues that have been resolved through the mediation effort;
- (5) A statement of the issues that are still unresolved, if any; and
- (6) A recommendation as to whether the Chairman of the Board should invoke fact-finding.

2.09: Designation of a Fact-Finder

- (1) Appointment by the Board. If the mediator's report (457 CMR 2.08) reveals that an impasse continues to exist, the Board shall send written notice to both parties informing them that mediation has not resolved the impasse and that the Board intends to act upon the petition for mediation and fact-finding by appointing a fact-finder. Promptly thereafter, the Board will appoint a fact-finder from its list of qualified individuals.
- (2) Selection by Alternative Means. If the parties jointly agree to select the fact-finder in an alternative manner, they must jointly inform the Board before the Board appoints a fact-finder. The parties must also inform the Board of the name, address, and telephone number of the fact-finder so selected.
- (3) Letter of Appointment. After a fact-finder has been selected or appointed, the Board will promptly send a letter of appointment and a copy of the petition to the fact-finder. Copies of the letter will be sent to both parties. The fact-finder is required to promptly notify the Board whether he or she accepts the appointment.
- (4) Disqualification or Withdrawal of the Fact-Finder. If the fact-finder has represented an employer or an employee organization within the last 12 months, the appointment will be absolutely revoked by the Board. Moreover, the fact-finder is required to disclose to the Board and the parties any circumstances likely to create a presumption of bias or which the fact-finder believes might disqualify him or her as an impartial fact-finder. Following such a disclosure, the Board will revoke the fact-finder's appointment unless both parties waive this presumptive disqualification. If a fact-finder is disqualified, resigns, dies, or withdraws from his or her duties, the Board will appoint another fact-finder in accordance with 457 CMR 2.09(1).

2.10: Withdrawal of Fact-finding Petition

A fact-finding petition may be withdrawn by the petitioning party in the case of a unilateral filing, or by agreement of both parties in the case of a joint filing, at any time prior to the appointment of a fact-finder. After the appointment of a fact-finder, a fact-finding petition may be withdrawn only by joint agreement of the parties. The parties will compensate the fact-finder for such services as he or she performed in accordance with 457 CMR 2.17.

The following text is effective 09/01/93

2.11: Fact-Finder's Responsibilities

- (1) Authority. The appointed fact-finder will have the authority and responsibility for the conduct of the fact-finding proceedings, and will have sole discretion in deciding any issues of procedure. The fact-finder shall immediately advise the Board if a work stoppage has occurred or is imminent.
- (2) Scheduling of Conferences and Hearings. The fact-finder shall consult with each party concerning the time, date, and place of each meeting or hearing. The fact-finder shall make an effort to expedite the process. The fact-finder will be sole judge of scheduling, and his or her ruling as to time, date, place, adjournment, or continuance of any meeting or hearing will be final and binding. Within a reasonable period of time prior to any hearing, the fact-finder shall serve upon each of the parties and the Board, by first class mail, postage prepaid, a written notice of the time, place, and date of such hearing.

2.12: Mediation during Fact-Finding

- (1) Authority. The fact-finder or mediator has the authority to mediate the dispute.
- (2) Mediation Proceedings. When acting as mediator, the fact-finder may hold separate or joint meetings with the parties. There shall be no public access to mediation sessions.
- (3) Report to the Board. If the dispute is settled through mediation by the fact-finder, the fact-finder shall promptly notify the Board of the date and terms of the settlement.

2.13: Hearing before the Fact Finder; Subpoenas

- (1) Proceeding in the Absence of a Party. Fact-finding may proceed in the absence of a party who, after notice given in accordance with 457 CMR 2.11, fails to appear for a conference or hearing or to obtain a continuance. The fact-finder may choose not to base the report solely upon the presentation of the appearing party. If any party to the dispute fails to appear or to cooperate with the fact-finder, the fact-finder may determine what further evidence is required and may obtain and use any evidence deemed relevant. The fact-finder shall disclose to the appearing party what evidence he or she intends to use and shall give the appearing party an opportunity to respond to such evidence.
- (2) Waiver of Fact-Finding Hearing. The parties may agree to waive the fact-finding hearings. The fact-finder is authorized to issue the report on the basis of whatever documents and stipulations are submitted.
- (3) Representation. Any party may be represented by counsel or other person of its choosing. Such counsel or representative has exclusive authority to present that party's case.
- (4) Third Party Intervention. The fact-finder has authority to decide, in consultation with the parties, whether to permit third party intervenors to file any statements, memoranda, or briefs.
- (5) Order of Proceedings. The fact-finder will:
 - (a) Obtain from the parties a statement of the issues in dispute;

2.13: continued

- (b) Determine the order in which the parties present their cases. In the case of a unilateral petition, the petitioning party will ordinarily present its case first;
- (c) Afford each party a full and fair opportunity to present all relevant evidence.

(6) Fact-Finder's Authority to Issue Subpoenas and Administer Oaths. The fact-finder shall have the authority, upon delegation of the Board, to administer oaths, to take the testimony of any person under oath, and to issue subpoenas to compel the attendance of witnesses or the production of documents (MBCA Form CA5). A request for a subpoena will be allowed unless it is overbroad, oppressive, or otherwise legally defective.

(7) Waiver of Objections. Any party to a fact-finding hearing who fails to make a timely objection, as determined by the fact-finder, to an infraction of these rules will be deemed to have waived that objection.

The following text is effective 09/01/93

(8) Briefs. Upon the close of the hearings each party has the right to make an oral argument or to file a brief. The time limits on submission of briefs will be established by the fact-finder after consultation with the parties. Should the parties wish to make oral arguments, the order of proceeding will be at the discretion of the fact-finder.

2.14: Fact-Finding Report

(1) Form and Contents. After the close of the hearing and the submission of briefs, if any, the fact-finder will prepare, sign, and date a written fact-finding report. It should include:

- (a) a statement of the issue(s);
- (b) the findings of fact regarding the issue(s);
- (c) a statement of the recommendation for each issue;
- (d) the rationale for the recommendation reached on each issue; and
- (e) a summary cover sheet containing a complete statement as to the fact-finder's recommendations on all issues.

(2) Service of the Report. The fact-finder must send, by certified mail, two copies of the fact-finding report to the Board and one copy to the counsel or representative of each party to the dispute.

(3) Clarification of Report. One or both parties may request that the fact-finder clarify any recommendation in the fact-finding report. This request must be received by the Board within seven days of the date of the report. The party(ies) making this request must also send a copy of the request to the fact-finder. The fact-finder will attempt to dispose of such request within ten days of the Board's receipt of the report. The fact-finder must promptly determine whether the clarification is warranted and then notify the parties and the Board in writing or by conference of the disposition of the request for clarification.

(4) Action on Report. If the parties fail to notify the Board as to the disposition of the fact-finder's report within ten days after the Board's receipt of the report, the Board will assume that no agreement between the parties has been reached on the issues in dispute.

(5) Publication of the Report. If the impasse remains unresolved ten days after the Board's receipt of the fact-finder's report, the Board will make it public.

2.15: Termination of Fact-Finding

Unless the parties agree otherwise, the fact-finder will perform no further service in connection with the dispute once the fact-finding report and clarification, if any, have been served. The fact-finder will keep the Board informed of his or her activities and will notify the Board promptly of any settlement of the dispute and of the terms of the settlement.

2.16: Mediation after Fact-Finding

If the parties are unable to come to agreement after the receipt of the fact-finder's report, a staff mediator may be appointed to assist them in resolving the dispute.

2.17: Compensation of Fact-Finder

The fact-finder will be entitled to the compensation rate contained in his or her resume on file with the Board, for each day or portion thereof spent in hearing, preparation, and issuance of the fact-finder's report, including clarification, if any, and in mediation. The fact-finder will also be entitled to reimbursement for necessary and ordinary expenses. The costs for fact-finding will be equally divided between the parties unless they agree otherwise. The fact-finder's bill showing the amount payable by each of the parties must accompany the final fact-finding report. The fact-finder may submit interim bills to the parties in the course of the proceedings, and copies of such interim bills must also be sent to the Board. The parties shall make payment directly to the fact-finder.

The following text is effective 09/01/93

2.18: Certification of Completion of the Collective Bargaining Process

Either or both parties may request the Board to certify to the parties that the collective bargaining process, including mediation, fact-finding, or arbitration, if applicable, has been completed. If the Board determines that the dispute resolution mechanisms provided for in M.G.L. c. 150E, § 9 have been exhausted, it will certify to the parties that the collective bargaining process has been completed.

2.19: Voluntary Interest Arbitration

Upon joint request of the parties, the Board will administer any written and duly authorized agreement to enter into final and binding interest arbitration of a collective bargaining dispute.

2.20: Private Sector Interest Mediation

Upon request, the Board may appoint a mediator to assist in the resolution of a private sector interest mediation dispute.

2.21: Severability

If any of 457 CMR should be declared invalid by a final order or decree of a court with proper jurisdiction, such invalid provisions or rules will be severed.

REGULATORY AUTHORITY

457 CMR 2.00; M.G.L. c. 150, § 2.

The following text is effective 09/01/93

457 CMR: BOARD OF CONCILIATION AND ARBITRATION

457 CMR 3.00: RULES FOR GRIEVANCE MEDIATION AND ARBITRATION IN THE PUBLIC AND PRIVATE SECTORS

Section

- 3.01: Scope of Rules
- 3.02: Confidentiality
- 3.03: Voluntary Grievance Mediation
- 3.04: Appointment of Mediator
- 3.05: Mediator's Function
- 3.06: Admissibility of Grievance Mediation in Arbitration
- 3.07: Initiation of Grievance Arbitration
- 3.08: Appointment and Qualifications of the Arbitrator
- 3.09: Scheduling of Hearing by the Board
- 3.10: Issuance of Subpoenas
- 3.11: Hearing before the Arbitrator
- 3.12: Arbitration Awards
- 3.13: Clarification, Modification, or Correction of Awards
- 3.14: Publication of Award and Opinion
- 3.15: Request for Arbitration Before an Ad Hoc Arbitrator
- 3.16: Severability

3.01: Scope of Rules

457 CMR 3.00 will govern the procedures for mediation and arbitration of grievances between parties whenever in their collective bargaining agreement(s) or by submission they have provided for mediation and/or arbitration through the Board of Conciliation and Arbitration. 457 CMR 3.00 will apply to the mediation and arbitration of grievances arising in the public sector pursuant to M.G.L. c. 150E s. 8, and in the private sector pursuant to M.G.L. c. 150.

3.02: Confidentiality

Public policy and the success of the Board's mission require that the Chairman and employees of the Board maintain a reputation for impartiality and integrity. Pursuant to M.G.L. c. 150, s. 10A, and M.G.L. c. 150E, s. 9, a mediator, including an arbitrator acting in a mediatory capacity, will not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers, or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

3.03: Voluntary Grievance Mediation

At any time, an employee organization and employer may request mediation assistance for problems arising from the interpretation or application of terms of a collective bargaining agreement. This includes preventive mediation prior to the filing of a grievance and grievance mediation. A party making such a request must file a petition with the Board (MBCA Form F-2M). The original petition and one copy, signed and dated by the petitioning party(ies), should be sent to:

Board of Conciliation and Arbitration
Leverett Saltonstall Building
100 Cambridge Street, Room 1105
Boston, MA 02202
FAX # (617) 727-4961

3.04: Appointment of Mediator

(1) Appointment. Upon receipt of the Grievance Mediation Petition, the Board will promptly ascertain whether the parties agree to grievance mediation. If the parties agree, the Board will appoint a staff mediator. Alternatively, should the parties request an outside mediator, the Board will assist them by providing a list from its panel of qualified individuals.

3.04: continued

The following text is effective 09/01/93

- (2) Fees. There will be no cost for a Board staff mediator. The cost of an outside mediator, however, will be equally divided between the parties, unless they agree otherwise.

3.05: Mediator's Function

The function of the mediator is to assist the parties in reaching a voluntary settlement of the dispute prior to grievance arbitration. A mediator may hold separate or joint conferences for this purpose. An agreement to mediate, however, will in no way alter a scheduled arbitration date unless both parties agree to postpone the arbitration. At no time shall a grievance mediator act as arbitrator of any case he or she has mediated, nor shall a grievance mediator discuss any aspect of the grievance mediation process with the appointed arbitrator.

3.06: Admissibility of Grievance Mediation in Arbitration

No discussions, offers of compromise, or proposed settlements generated during grievance mediation shall be admissible as evidence in an arbitration proceeding.

3.07: Initiation of Grievance Arbitration

- (1) Petition for Arbitration. An employer or an employee organization, or both, may petition the Board to initiate grievance arbitration (MBCA Form F-2A) as provided for in any collective bargaining agreement or other agreement between them. Pursuant to 457 CMR 3.03 through 3.06, at any time prior to the arbitration hearing, the parties may also jointly request the Board to appoint a mediator to aid them in resolving the grievance in advance of the arbitration proceeding. If the petition is being brought unilaterally, then the petitioning party shall cause a copy of the petition to be served by first-class mail, postage prepaid, on the principal representative of the other party in accordance with the provisions of this subparagraph. The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with these rules. Failure to so state shall suspend the processing of the petition. The party or parties requesting grievance arbitration shall mail the original petition, signed and dated by the petitioning party(ies) and a copy of the pertinent collective bargaining agreement to:

Board of Conciliation and Arbitration
Leverett Saltonstall Building
100 Cambridge Street, Room 1105
Boston, MA 02202
FAX # (617) 727-4961

Upon receipt, the Board will stamp the petition with the date of receipt.

If the petition is filed by FAX, the petitioner shall also immediately mail the original, signed petition, and a copy of the pertinent collective bargaining agreement, to the Board in the manner set forth above.

- (2) Fee for Grievance Arbitration. The fee for arbitration before the Board shall be \$100.00, of which \$50.00 shall be paid by the employee organization and \$50.00 shall be paid by the employer.

3.08: Appointment and Qualifications of the Arbitrator

- (1) Appointment of a Single Neutral Arbitrator. The Chairman of the Board may appoint a single neutral arbitrator, who will hear and determine the case promptly.

3.08: continued

(2) Appointment of a Tripartite Board. The Chairman of the Board may appoint a tripartite board to hear and determine grievance arbitration cases on a case-by-case basis. The Chairman shall be the neutral member of this board. One of the other members shall be a representative of labor and one a representative of employers of labor. Prior to appointing these representatives, the Chairman will consult with the employee organization and employer involved in the case to determine whether they want a representative to sit on the case and, if so, what representative they recommend.

The following text is effective 09/01/93

(3) Disqualification or Withdrawal of the Arbitrator. Prior to accepting an appointment, the neutral arbitrator is required to disclose to the Board any circumstances likely to create a presumption of bias, or which the arbitrator believes might disqualify him or her as an impartial arbitrator. If the arbitrator is disqualified or withdraws, the Board will appoint another arbitrator in accordance with the provisions of 457 CMR 3.08(1) and (2).

3.09: Scheduling of Hearing by the Board

(1) Scheduling. Upon receipt of the petition, the Board will serve upon each of the parties a written notice of the date and time of the hearing to be held at the offices of the Board in either Boston or Springfield. The notice will be given reasonably in advance of the hearing. The Board will make every effort to hold the hearing promptly after it receives the petition.

(2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Board will generally accept such requests. If one party requests a continuance of the hearing, the Board may for good cause shown and, where possible, after consultation with the other party, continue the hearing to another time and date, set at the discretion of the Chairman. Notice of a new hearing date and time will be given in accordance with the provisions of 457 CMR 3.09(1).

3.10: Issuance of Subpoenas

Any party may request the Board to issue a subpoena to compel the attendance of witnesses or the production of documents. (MBCA Form CA5) A request for a subpoena will be allowed unless it is overbroad, oppressive, or otherwise legally defective. The party requesting the subpoena shall be responsible for service of the subpoena.

3.11: Hearing Before the Arbitrator

(1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of a party who, after notice given in accordance with 457 CMR 2.09, fails to appear or to obtain a continuance. The Board shall investigate the circumstances surrounding a party's failure to be present, and, under extraordinary circumstances, may reopen the record, subject to rebuttal by the appearing party.

(2) Representation. A party may be represented by counsel or other person of its choosing. Such counsel or representative has the exclusive authority to present that party's case.

(3) Last Chance Grievance Mediation. Directly preceding the scheduled arbitration hearing and upon agreement of the parties, a mediator may assist the parties in a final attempt to settle the grievance. The conduct of such mediation shall be governed by 457 CMR 3.03 through 3.06.

(4) Conduct of Proceedings. The arbitrator shall have the authority and responsibility for the conduct of the arbitration proceedings and will have sole discretion in deciding any issues of procedure. The arbitrator will:

- (a) Attempt to obtain from the parties a joint statement of the issue(s) in dispute;
- (b) Determine the order of presentation;
- (c) Record the date, time, and place of each hearing, and the names of the counsel or representatives and of all others present;

3.11 continued

- (d) Administer oaths or affirmations;
- (e) Afford each party a full and fair opportunity to present relevant evidence and argument;
- (f) Require the parties to submit additional evidence that the arbitrator deems necessary to an understanding and determination of the dispute; and,
- (g) Rule on the admissibility of evidence.

The following text is effective 09/01/93

(5) Transcript or Recording of Proceedings. A party wishing a stenographic record of the proceedings shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record. The other party may purchase a copy from the stenographer. Such transcript shall be the official record of the proceedings, and a copy shall be provided to the arbitrator free of charge. The arbitrator's copy of the transcript will be made available to the parties for inspection at a time and place determined by the arbitrator. The arbitrator, but not the parties, may make an unofficial recording of the proceedings strictly for his or her own use.

(6) Waiver of Objections. Any party to an arbitration hearing who fails to make a timely objection, as determined by the arbitrator, to an infraction of these rules will be deemed to have waived that objection.

(7) Closing of Hearings. When the arbitrator determines that all of the evidence has been offered, he or she shall declare the hearing closed. The arbitrator may reopen the record for good cause shown. Parties have the right to make oral arguments or to submit written briefs. The time limits on submission of briefs will be established by the arbitrator after consultation with the parties. Should the parties wish to make oral argument, the arbitrator will determine the order of proceeding.

(8) Submission of Briefs. Any briefs submitted in arbitration proceedings before the Board should be submitted to the Board in duplicate, together with a pre-addressed and postage paid envelope addressed to the representative or counsel of the opposing party. The Board will convey all briefs.

3.12: Arbitration Awards

The arbitrator shall issue an award within a reasonable period of time after the hearing has been closed and any briefs have been filed. The Board will simultaneously send by first class mail, postage prepaid, a copy of the award and any accompanying opinion to the counsel or representative of each party.

3.13: Clarification, Modification, or Correction of the Award

- (1) Standards.
 - (a) Clarification. The arbitrator may clarify the award if it is so indefinite or incomplete that it cannot be performed.
 - (b) Modification or Correction. The arbitrator may modify or correct the award if there is: an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in an award; or if the award is imperfect in a matter of form not affecting the merits of the controversy.
- (2) Procedure.
 - (a) Joint Request. A joint request for clarification, modification, or correction of an award must be submitted to the Board within a reasonable time after the requesting parties have received the award. The Board will promptly determine whether to grant the request. The Board may call a conference with the parties to consider the request. The Board will then promptly notify the parties in writing of the disposition of the request.

457 CMR: BOARD OF CONCILATION AND ARBITRATION

3.13: continued

(b) Unilateral Request. A unilateral request for clarification, modification, or correction of an award must be submitted to the Board within a reasonable time after the requesting party has received the award. Such a request must be served forthwith upon the opposing party's counsel or representative. The Board will give the opposing party an opportunity to respond or raise objections to the request. Any such response or objection must be received by the Board within a reasonable time after the opposing party has received a copy of the request. The Board shall then determine whether to proceed as set forth in 457 CMR 3.13(1).

The following text is effective 09/01/93

3.14: Publication of Award and Opinion

The award and opinion of the arbitrator will be treated as a public record and after issuance will be open to public inspection. The Board may have its awards and opinions published unless either party to the proceeding gives written notice to the Board within 30 days of the award that it does not wish to have such award and opinion published.

3.15: Request for Arbitration Before an Ad Hoc Arbitrator

The Board will designate an outside arbitrator if so specified in the collective bargaining agreement. If no procedure is specified, the Board will appoint an arbitrator from its list of qualified individuals. The arbitrator so designated should conduct the arbitration proceedings and render an award in accordance with these rules. The compensation of an outside arbitrator will be in accordance with the requirements of 457 CMR 2.17.

3.16: Severability

If any of 457 CMR 3.00 should be declared invalid by any final order or decree of a court with proper jurisdiction, such invalid provision or rule will be severed.

REGULATORY AUTHORITY

457 CMR 3.00; M.G.L. c. 150, § 2.

The following text is effective 09/01/93

457 CMR 4.00: CONDUCT OF GRIEVANCE ARBITRATION PROCEEDINGS

Section

- 4.01: Scope of Rules and Effective Date
- 4.02: Petition to Initiate Grievance Arbitration Before the Board
- 4.03: Scheduling of Hearing by the Board; Continuances
- 4.04: Withdrawal of Petition
- 4.05: Hearing Before the Board
- 4.06: Arbitration Awards by the Board
- 4.07: Request for Arbitration Before Ad Hoc Arbitrator
- 4.08: Gender; Days
- 4.09: Severability
- (4.10 through 4.89: Reserved)
- 4.90: Appendix

4.01: Scope of Rules and Effective Date

457 CMR 4.00 shall govern the procedure for the arbitration of grievances which arise during the life of a collective bargaining agreement wherein the parties have agreed upon the Board of Conciliation and Arbitration (hereinafter the Board) as the arbitration tribunal. This chapter shall apply to the arbitration of grievances arising in either the private sector pursuant to M.G.L. c. 150 or the public sector pursuant to M.G.L. c. 150E § 8. 457 CMR 4.00 shall become effective as of June 26, 1978 and shall revoke as of said date all grievance arbitration rules previously adopted by this Board.

4.02: Petition to Initiate Grievance Arbitration Before the Board

- (1) Who May File; When to File; Form; Where to File and Number of Copies; Service on Other Party.
 - (a) Who. A petition to initiate grievance arbitration may be filed by an employer or by a labor organization or by both as the collective bargaining agreement or other agreement between the parties shall provide. In the absence of a controlling provision in the collective bargaining agreement, either party may bring such a petition.
 - (b) When. Such a petition shall be filed in accordance with the time requirements of the collective bargaining agreement between the parties. In the absence of such provision in a collective bargaining agreement, such petition shall be filed within a reasonable period of time.
 - (c) Form. The petition shall be prepared on a form furnished by the Board which appears as 457 CMR 4.90 Appendix.
 - (d) Where; Copies. The original, signed by the petitioner(s) and one copy of said petition, shall be filed with the Board at its offices in the Leverett Saltonstall Building, 100 Cambridge St., Boston, Mass. 02202.
 - (e) Service. If the petition is being brought unilaterally, then the petitioning party shall cause a copy of said petition to be served on the principal representative of the other party by registered or certified mail. The petitioning party, if proceeding unilaterally, shall state in the appropriate place on the petition that it caused a copy of the petition to be served on the principal representative of the other party in accordance with the provisions of 457 CMR 4.02(1)(e). Failure to so state shall suspend the processing of the petition. Upon receipt, the Board shall stamp the petition with the appropriate date.
- (2) Contents. The petition shall include the following:
 - (a) The name, address and affiliation of the labor organization involved and the name, address, and telephone number of its principal representative.
 - (b) The name and address of the employer involved and the name, address and telephone number of its principal representative.
 - (c) The nature of the employer's business.

4.02: continued

(d) If the petition is being brought jointly and if the parties have agreed upon the issue(s), there shall be a brief statement as to the nature of the dispute and a statement as to the issues(s) jointly submitted; otherwise, the moving party shall give a brief statement as to the nature of the dispute and the remedy sought.

The following text is effective 09/01/93

(e) If the petition is being brought unilaterally, a statement that a copy of the petition is being served in accordance with the procedures contained in 457 CMR 4.02(1)(e).

(f) The party(ies) bringing such petition shall sign and date such petition and shall file with the petition a copy of the pertinent collective bargaining agreement.

4.03: Scheduling of Hearing by the Board; Continuances

(1) Scheduling. Upon receipt of the petition, the Board shall serve upon each of the parties a written notice of hearing to be held at the offices of the Board at a time and date fixed therein. Such notice shall be given reasonably in advance of such hearing. In cases where the petition has been brought unilaterally, the Board may give notice of hearing by certified mail, return receipt requested.

(2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Board shall continue the hearing to such time and date. If one party requests a continuance of the hearing, the Board may for good cause shown and after consultation with the other party, where possible, continue the hearing to another time and date. Notice of a new hearing date and time shall be given in accordance with the provisions of 457 CMR 4.03(1). Every effort shall be made by the Board to hold such hearing seasonably after receipt of the petition.

4.04: Withdrawal of Petition

A petition to initiate grievance arbitration may be withdrawn at any time prior to the holding of the arbitration hearing by the petitioning party in the case of a unilateral filing or by agreement of both parties in the case of a joint filing. Upon or after the holding of the arbitration hearing, the petition may be withdrawn only by joint agreement of the parties.

4.05: Hearing Before the Board

(1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of any party who, after notice given in accordance with 457 CMR 4.03, fails to be present or fails to obtain an adjournment. The Board may choose not to base its award solely upon the presentation of one party; rather, it may afford the defaulting party 14 days from the date of the hearing to submit evidence and argument in writing to the Board with a copy to the other party. If the defaulting party makes no such offer of proof within the time aforesaid, the Board shall decide the case on the evidence and argument before it. If the defaulting party chooses to make such offer of proof, the Board shall afford the other party an appropriate opportunity to make a seasonable response.

(2) Counsel or Representative of the Parties. At or before the first hearing conducted by the Board, each party to the dispute shall furnish the Board with a written appearance identifying that party's counsel or representative. Such person or his designee shall have the exclusive authority to present that party's case to the Board, and the Board shall deal with such person as the exclusive spokesman and representative for that party throughout the arbitration proceeding or until it receives notice that some other person shall serve as counsel or representative for a party.

(3) Order of Proceedings. The Board shall open the hearing with a reading of the pertinent portions of the petition to initiate grievance arbitration. The petitioning party will ordinarily present its case first, but the Board may vary this procedure. In the case of a petition brought jointly, the Board shall determine the order of proceeding.

4.05: continued

(4) Record of Proceedings. If one or both parties desire that a stenographic record of the proceedings be made, that party or both parties, as the case may be, shall contact the Board seven days in advance of the hearing to ask that the Board provide such a service. If the Board provides such a service, transcripts will be provided upon request at an appropriate cost to the requesting party(ies). The Board may on its own motion make a stenographic record of the proceedings.

The following text is effective 09/01/93

(5) Evidence. Each party shall be afforded full and equal opportunity for the presentation of relevant proofs. The parties may offer such evidence as they desire and shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the dispute. The Board shall rule on the admissibility of the evidence offered. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the counsel or representative of both parties except where one of the parties is in default or has waived its right to be present.

(6) Waiver of Objections. Any party to an arbitration hearing who fails to make a timely objection, as determined by the Board, to infraction of these rules shall be deemed to have waived such objection.

(7) Closing of Hearings. The Board shall inquire of both parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, it shall declare the hearings closed, and it shall record the date and time thereof. Upon the close of the hearings each party shall have the right to make an oral argument and/or file a brief with the Board. The time limits on submission of briefs shall be established by the Board after consultation with the parties. Should the parties wish to make oral argument, the Board shall determine the order of proceeding.

4.06: Arbitration Awards by the Board

(1) Arbitration Award. After the close of the hearing and the submission of briefs, if any, the Board shall render an award on a form prepared by it. The award shall be decided by majority vote of the Board members; any dissent shall be noted on the award.

(2) Time of Award. The Board shall make every effort to render the award within 30 days of the close of the hearings.

(3) Opinion. The Board shall make every effort to render an opinion to accompany the award. The opinion shall provide a statement of the rationale by which the result was reached. Dissenting opinions may also be given.

(4) Service of Award. The Board shall simultaneously send by mail a copy of its award and accompanying opinion to the principal representative of each party as such name appears on the petition to initiate grievance arbitration or on the appearance form at the time of hearing.

(5) Clarification of Award.

(a) Request for Clarification. Each party or both parties may request the Board to clarify any aspect of its award provided such request is made within a reasonable time of the date of the Board's award.

(b) Procedure in Cases of Joint Request. In cases where the Board receives a joint request from the parties to clarify its award, it shall promptly determine whether any clarification is warranted and shall determine the nature of the clarification, if any, and shall notify the parties in writing of the disposition of the request for clarification. If the circumstances so warrant, the Board may call a conference with the parties to consider the matter of clarification.

457 CMR: BOARD OF CONCILATION AND ARBITRATION

4.06: continued

(c) Procedure in Cases of Unilateral Request. In cases where the Board receives a unilateral request from a party to clarify its award, it shall have the discretion to decide whether to proceed with such request. If it decides to proceed, it shall promptly determine whether the other party has any objection to the request, and if the circumstances so warrant, it may call a conference with the parties to consider the matter of objections and clarification thereafter, the Board shall decide upon the question of clarification and shall promptly notify the parties in writing of the disposition of these issues.

The following text is effective 09/01/93

(6) Publication of Award and Opinion. The awards and opinions of the Board shall be treated as public records and after issuance shall be open to public inspection by any person. The Board may have its awards and opinions published by any of the publishing services unless either party to the proceeding gives written notice to the Board within 10 days from the date of the award that it does not wish to have such award and opinion published.

4.07: Request for Arbitration Before Ad Hoc Arbitrator

In the case of those collective bargaining agreements where the Board is named as the tribunal administering grievance arbitration before ad hoc arbitrators, the Board shall follow the procedure specified in the collective bargaining agreement in the designation of an outside arbitrator. If no procedure is specified in such agreement, the Board shall appoint an arbitrator from the list of qualified persons that it maintains. The arbitrator so designated shall observe in the conduct of the arbitration proceedings and in the rendering of his award the procedures applicable to the Board's handling of such matters as previously spelled out in these rules. The compensation of an outside arbitrator shall be in accordance with the requirements set forth in 457 CMR 2.15 of the Board's Fact Finding Rules.

4.08: Gender; Days

- (1) Gender. The masculine gender shall be deemed to denote the feminine or neutral gender, the singular to denote the plural and vice-versa where the context so permits.
- (2) Days. References to days shall mean calendar days, and time calculations shall commence with the day following notice.

4.09: Severability

The provisions of these rules are severable, and if any of the rules contained herein should be declared invalid by an order or decree of a court with proper jurisdiction and if said order or decree has become final, such invalid provision or rule shall be severed herefrom.

(4.10 through 4.89: Reserved)

The following text is effective 09/01/93

4.90: Appendix

SEE TEXT

REGULATORY AUTHORITY

457 CMR 4.00; M. G. L. c. 150E, § 8.